IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 7284/2002

FAZLURREHMAN Vs. BANK OF INDIA & ORS.

DATE: 06.12.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Suresh Sahni for the petitioner.
Mr. R.S. Bhati for the respondents.

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In this writ petition, the petitioner has challenged the impugned order dated 05.08.2002 (Annexure-3) passed by the Additional District Judge No.4, Kota, whereby the application seeking leave to defend has been allowed subject to condition of depositing Rs. 60,000/- as surety.

The petitioner has challenged the aforesaid condition of furnishing surety of Rs. 60,000/- imposed vide order dated 05.08.2002 on the basis of the ratio decided by the Hon'ble Supreme Court in the case of **M/s Mechalec Engineers & Manufacturers Vs. M/s Basic Equipment Corporation, AIR 1977 SC 577,** wherein the Hon'ble Apex Court has held that if the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to

leave to sign judgment and the defendant is entitled to unconditional leave to defend.

Therefore, in view of the ratio decided by the Hon'ble Supreme Court in the aforementioned case, the condition of furnishing surety of Rs. 60,000/-, is contrary to the ratio decided by the Hon'ble Supreme Court.

In the light of the ratio decided by the Hon'ble Supreme Court in the case of **M/s Mechalec Engineers & Manufacturers (supra),** the condition imposed upon on the petitioner of furnishing surety of Rs. 60,000/- vide impugned order dated 05.08.2002 is herewith quashed and set-aside.

The writ petition stands allowed accordingly.

The stay order dated 25.10.2002 granted by this Court stands rejected. The stay application stands dismissed.

(K.S. RATHORE),J.

/KKC/